



48 CFR Parts 802, 852, and 853

RIN 2900-AR30

VA Acquisition Regulation: Definitions, Solicitation Provisions and Contract Clauses, and Forms

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Veterans Affairs Acquisition Regulation (VAAR) to provide needed editorial changes. VA is publishing a technical amendment to make minor administrative corrections in the definitions, clauses, provisions and forms, and to remove duplicate or outdated definitions associated with the previously published rules.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to make minor final revisions and edits to three completed parts that are necessary to conform with FAR writing style, standard Government publication formats and drafting standards. VA is updating these parts to ensure standardization in titles with FAR drafting principles, as well as to update any VA organizational changes subsequent to the final rules. In particular, this rulemaking makes technical administrative amendments to part 802, Definitions; part 852, Solicitation Provisions and Contract Clauses; and part 853, Forms.

The three parts addressed in this action have been reviewed and revised as affected parts during the course of the VAAR rewrite project. This is, therefore, a technical, non-substantive change to the texts of these three parts to ensure conformity with those standards.

Discussion and Analysis

Technical corrections include the following:

a. For part 802:

(1) Section 802.101 is amended to revise the definition for the Chief Acquisition Officer; the definition for COTR has been removed; the definition for COR has been added to reflect the current use of COR; the definitions for HCA and SPE have been revised to reflect the current organization structure of VA, and to update the website listed for Vendor Information Pages (VIP) has been updated.

(2) Section 802.101 is also amended to delete the following definitions: Deputy Senior Procurement Executive (DSPE) and Resident Engineer. The DSPE role is currently inactive at the VA and the current definition for “Resident Engineer” is inaccurate and unnecessary.

b. For part 852:

(1) Section 852.101 is redesignated as section 852.101-70 to conform with the VAAR numbering convention.

(2) Section 852.102 is amended to correct the word “chapter” because it was misspelled and to update website addresses in paragraphs (e) and (f) that have since changed.

(3) Subpart 852.2 is amended to capitalize all the major words in the section titles of the provisions and clauses.

(4) Section 852.216-75 is amended to delete the word “clause” in the title and to capitalize the major words in the title of the clause.

c. For part 853:

(1) Subpart 853.2 is amended to remove section 853.201 and section 853.201-1 as they include references to the “VA Contracting Officer Certification Program” which no longer exists.

(2) Subpart 853.2 is amended to remove section 853.215 and section 853.215-70 as they are no longer referenced within the VAAR.

(3) Amend Section 853.236 as well as sections 853.236-70, 853.236-71, and 853.236-72 to standardize the format and style convention.

(4) Amend subpart 853.2 to remove sections 853.271-1 and 853.271-2 as this coverage is no longer needed in the VAAR as the authority to perform the functions outlined in these sections are established by other provisions of law.

Notice and Comment

This rule makes administrative changes that do not require notice and comment procedures, consistent with 41 U.S.C. 1707, 48 CFR 1.301, and related authority. The changes will not have a significant effect on any party and will not have a significant cost or administrative impact on contractors or offerors.

Executive Orders 12866 and 13563

Executive Order 12866 - Regulatory Planning and Review directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 - Improving Regulation and Regulatory Review

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA’s policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects

48 CFR Part 802

Government procurement.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 853

Government procurement.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 3, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,
Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 48 CFR parts 802, 852, and 853 as set forth below.

PART 802—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 802 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

Subpart 802.1—Definitions

2. Amend section 802.101 by:
 - a. Revising the definition for “Chief Acquisition Officer;”
 - b. Adding the definition for “COR” in alphabetical order;
 - c. Removing the definitions for “COTR” and “DSPE;”
 - d. Revising the definition for “HCA;”
 - e. Removing the definition for “Resident Engineer;” and
 - f. Revising the definitions for “SPE” and “Vendor Information Pages (VIP).”

The addition and revisions read as follows:

802.101 Definitions.

* * * * *

Chief Acquisition Officer (CAO) means the Principal Executive Director, Office of Acquisition, Logistics, and Construction.

COR means Contracting Officer's Representative.

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HCA means the Head of the Contracting Activity, an individual appointed in writing by the SPE.

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SPE means the Senior Procurement Executive who is also the Executive Director, Office of Acquisition and Logistics. The SPE is responsible for the management direction of the VA acquisition system.

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Vendor Information Pages (VIP) means the VetBiz.va.gov VIP database at <https://www.vetbiz.va.gov/vip/>.

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PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 852.1 - Instructions for Using Provisions and Clauses

852.101 [Redesignated as 852.101-70]

4. Redesignate section 852.101 as section 852.101-70.

5. Amend section 852.102 by revising the first sentence of paragraph (b) and paragraphs (e) and (f) to read as follows:

852.102 Incorporating provisions and clauses.

* * * * *

(b) For any FAR or 48 CFR chapter 8 (VAAR) provision or clause that requires completion by the contracting officer, the contracting officer shall, as a minimum, insert the title of the provision or clause and the paragraph that requires completion in full text in the quotation, solicitation, or contract. * * *

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(e) If one or more FAR provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer

shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: <https://www.acquisition.gov/browse/index/far>.

(f) If one or more 48 CFR chapter 8 (VAAR) provisions or clauses, or portions thereof, are incorporated in a quotation, solicitation, or contract by reference, the contracting officer shall insert in the FAR provision or clause required by paragraph (c) or (d) of this section the following Internet address: <https://www.acquisition.gov/vaar>.

Subpart 852.2 - Text of Provisions and Clauses

6. Revise the heading for section 852.203-70 to read as follows:

852.203-70 Commercial Advertising.

7. Revise the heading for section 852.204-70 to read as follows:

852.204-70 Personal Identity Verification of Contractor Personnel.

8. Revise the heading for section 852.207-70 to read as follows:

852.207-70 Report of Employment under Commercial Activities.

9. Revise the heading for section 852.209-70 to read as follows:

852.209-70 Organizational Conflicts of Interest.

10. Revise the heading for section 852.211-70 to read as follows:

852.211-70 Equipment Operation and Maintenance Manuals.

11. Revise the heading for section 852.211-72 to read as follows:

852.211-72 Technical Industry Standards.

12. Revise the heading for section 852.214-71 to read as follows:

852.214-71 Restrictions on Alternate Item(s).

13. Revise the heading for section 852.214-72 to read as follows:

852.214-72 Alternate Item(s).

14. Revise the heading for section 852.214-73 to read as follows:

852.214-73 Alternate Packaging and Packing.

15. Revise the heading for section 852.214-74 to read as follows:

852.214-74 Marking of Bid Samples.

16. Revise the heading for section 852.216-71 to read as follows:

852.216-71 Economic Price Adjustment of Contract Price(s) Based on a Price Index.

17. Revise the heading for section 852.216-72 to read as follows:

852.216-72 Proportional Economic Price Adjustment of Contract Price(s) Based on a Price Index.

18. Revise the heading for section 852.216-73 to read as follows:

852.216-73 Economic Price Adjustment—State Nursing Home Care for Veterans.

19. Revise the heading for section 852.216-74 to read as follows:

852.216-74 Economic Price Adjustment—Medicaid Labor Rates.

20. Amend section 852.216-75 by revising the section heading, introductory text, and clause heading to read as follows:

852.216-75 Economic Price Adjustment—Fuel Surcharge.

As prescribed in 816.203-4(e)(5), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—FUEL SURCHARGE (NOV 2021)

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21. Revise the heading for section 852.219-9 to read as follows:

852.219-9 VA Small Business Subcontracting Plan Minimum Requirements.

22. Revise the heading for section 852.219-10 to read as follows:

852.219-10 VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.

23. Revise the heading for section 852.219-11 to read as follows:

852.219-11 VA Notice of Total Veteran-Owned Small Business Set-Aside.

24. Revise the heading for section 852.222-70 to read as follows:

852.222-70 Contract Work-Hours and Safety Standards—Nursing Home Care for Veterans.

25. Revise the heading for section 852.223-70 to read as follows:

852.223-70 Instructions to Offerors—Sustainable Acquisition Plan.

26. Revise the heading for section 852.223-71 to read as follows:

852.223-71 Safety and Health.

27. Revise the heading for section 852.228-70 to read as follows:

852.228-70 Bond Premium Adjustment.

28. Revise the heading for section 852.228-72 to read as follows:

852.228-72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.

29. Revise the heading for section 852.228-73 to read as follows:

852.228-73 Indemnification of Contractor—Hazardous Research Projects.

30. Revise the heading for section 852.232-72 to read as follows:

852.232-72 Electronic Submission of Payment Requests.

31. Revise the heading for section 852.233-70 to read as follows:

852.233-70 Protest Content/Alternative Dispute Resolution.

32. Revise the heading for section 852.233-71 to read as follows:

852.233-71 Alternate Protest Procedure.

33. Revise the heading for section 852.236-71 to read as follows:

852.236-71 Specifications and Drawings for Construction.

34. Revise the heading for section 852.236-79 to read as follows:

852.236-79 Contractor Production Report.

35. Revise the heading for section 852.236-80 to read as follows:

852.236-80 Subcontracts and Work Coordination.

36. Revise the heading for section 852.236-90 to read as follows:

852.236-90 Restriction on Submission and Use of Equal Products.

37. Revise the heading for section 852.236-92 to read as follows:

852.236-92 Notice to Bidders—Additive or Deductive Bid Line Items.

38. Revise the heading for section 852.237-70 to read as follows:

852.237-70 Indemnification and Medical Liability Insurance.

39. Revise the heading for section 852.237-71 to read as follows:

852.237-71 Nonsmoking Policy for Children's Services.

40. Revise the heading for section 852.237-72 to read as follows:

852.237-72 Crime Control Act—Reporting of Child Abuse.

41. Revise the heading for section 852.237-73 to read as follows:

852.237-73 Crime Control Act—Requirement for Background Checks.

42. Revise the heading for section 852.237-74 to read as follows:

852.237-74 Non-discrimination in Service Delivery.

43. Revise the heading for section 852.237-75 to read as follows:

852.237-75 Key Personnel.

44. Revise the heading for section 852.237-76 to read as follows:

852.237-76 Award to Single Offeror.

45. Revise the heading for section 852.241-70 to read as follows:

852.241-70 Disputes—Utility Contracts.

46. Revise the heading for section 852.243-70 to read as follows:

852.243-70 Construction Contract Changes—Supplement.

47. Revise the heading for section 852.246-71 to read as follows:

852.246-71 Rejected Goods.

48. Revise the heading for section 852.246-72 to read as follows:

852.246-72 Frozen Processed Foods.

49. Revise the heading for section 852.246-73 to read as follows:

852.246-73 Noncompliance with Packaging, Packing, and/or Marking Requirements.

50. Revise the heading for section 852.246-75 to read as follows:

852.246-75 Warranty of Construction—Guarantee Period Services.

51. Revise the heading for section 852.246-76 to read as follows:

852.246-76 Purchase of Shellfish.

52. Revise the heading for section 852.247-71 to read as follows:

852.247-71 Delivery Location.

53. Revise the heading for section 852.247-72 to read as follows:

852.247-72 Marking Deliverables.

54. Revise the heading for section 852.247-73 to read as follows:

852.247-73 Packing for Domestic Shipment.

55. Revise the heading for section 852.252-70 to read as follows:

852.252-70 Solicitation Provisions or Clauses Incorporated by Reference.

56. Revise the heading for section 852.270-1 to read as follows:

852.270-1 Representatives of Contracting Officers.

PART 853—FORMS

57. The authority citation for part 853 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

58. Revise subpart 853.2 to read as follows:

Subpart 853.2—Prescription of Forms

853.236 Construction and architect-engineer contracts.

853.236-70 VA Form 6298, Architect-Engineer Fee Proposal.

853.236-71 VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A-E Services).

853.236-72 VA Form 10101, Contractor Production Report.

Subpart 853.2—Prescription of Forms

853.236 Construction and architect-engineer contracts.

853.236-70 VA Form 6298, Architect-Engineer Fee Proposal.

VA Form 6298 is prescribed for use by contractors to submit proposals, as specified in 836.7001(a).

853.236-71 VA Form 2138, Order for Supplies or Services (Including Task Orders for Construction or A-E Services).

VA Form 2138 is prescribed for use to order supplies or services, including task orders for construction or A-E services, as specified in 836.7001(b).

853.236-72 VA Form 10101, Contractor Production Report.

VA Form 10101 is prescribed for use by contractors to submit required information to the resident engineer, as specified in 836.7001(c).

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